

# HOUSE BILL No. 1451

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-5-8; IC 36-1-8-10.5; IC 36-4-4-2; IC 36-8.

**Synopsis:** Public employees running for office. Provides that a government employee is considered to have resigned as an employee when the individual assumes an elected office at the same level of government at which the individual is employed.

**Effective:** July 1, 2001.

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## Smith V, Brown C

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January 11, 2001, read first time and referred to Committee on Local Government.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 1451

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A BILL FOR AN ACT to amend the Indiana Code concerning elections.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 3-5-8 IS ADDED TO THE INDIANA CODE AS  
2       A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3       1, 2001]:

4       **Chapter 8. Government Employees Holding Office**

5       **Sec. 1. As used in this chapter, "government employee" refers**  
6       **to an employee of any of the following:**

- 7           **(1) The state.**  
8           **(2) A county.**  
9           **(3) A city or a town.**  
10          **(4) A school corporation.**  
11          **(5) A township.**

12       **The term does not include an individual who holds an elected**  
13       **office.**

14       **Sec. 2. For purposes of this chapter, each of the following is**  
15       **considered a level of government separate from the other levels on**  
16       **the list:**

- 17           **(1) The state.**



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- (2) Counties.
- (3) Cities and towns.
- (4) School corporations.
- (5) Townships.

**Sec. 3. A government employee is considered to have resigned as an employee when the individual assumes an elected office at the same level of government at which the individual is employed.**

**Sec. 4. This chapter does not prohibit either of the following:**

- (1) A government employee from holding an elected office at a different level of government than the level at which the individual is employed.
- (2) A government employee from holding an elected office:
  - (A) at the same level of government at which the individual is employed; and
  - (B) to which the government employee was elected before January 1, 2001.

SECTION 2. IC 36-1-8-10.5, AS ADDED BY P.L.26-2000, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10.5. (a) This section does not apply to the following:

- (1) An elected or appointed officer.
- (2) An individual described in IC 20-5-3-11.

(b) **Subject to IC 3-5-8-3**, an employee of a political subdivision may:

- (1) be a candidate for any elected office and serve in that office if elected; or
- (2) be appointed to any office and serve in that office if appointed; without having to resign as an employee of the political subdivision.

SECTION 3. IC 36-4-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) The powers of a city are divided between the executive and legislative branches of its government. A power belonging to one (1) branch of a city's government may not be exercised by the other branch.

(b) **Subject to IC 3-5-8-3**, a city employee other than an elected or appointed public officer may:

- (1) be a candidate for any elective office and serve in that office if elected; or
- (2) be appointed to any office and serve in that office if appointed; without having to resign as a city employee.

SECTION 4. IC 36-8-3-12, AS AMENDED BY P.L.1-1999, SECTION 83, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12. **Subject to IC 3-5-8-3**, members of the safety

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board and members of any township, town, or city (including a consolidated city) police department, fire department, or volunteer fire department (as defined by IC 36-8-12-2) may:

- (1) be candidates for elective office and serve in that office if elected;
- (2) be appointed to any office and serve in that office if appointed; and
- (3) as long as they are not in uniform and not on duty, solicit votes and campaign funds and challenge voters for the office for which they are candidates.

SECTION 5. IC 36-8-10-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) The sheriff may dismiss, demote, or temporarily suspend a county police officer for cause after preferring charges in writing and after a fair public hearing before the board, which is reviewable in the circuit court. Written notice of the charges and hearing must be delivered by certified mail to the officer to be disciplined at least fourteen (14) days before the date set for the hearing. The officer may be represented by counsel. The board shall make specific findings of fact in writing to support its decision.

(b) The sheriff may temporarily suspend an officer with or without pay for a period not exceeding fifteen (15) days, without a hearing before the board, after preferring charges of misconduct in writing delivered to the officer.

(c) A county police officer may not be dismissed, demoted, or temporarily suspended because of political affiliation nor after the officer's probationary period, except as provided in this section.

**Subject to IC 3-5-8-3**, an officer may:

- (1) be a candidate for elective office and serve in that office if elected;
- (2) be appointed to an office and serve in that office if appointed; and
- (3) except when in uniform or on duty, solicit votes or campaign funds for the officer or others.

(d) The board has subpoena powers enforceable by the circuit court for hearings under this section. An officer on probation may be dismissed by the sheriff without a right to a hearing.

(e) An appeal under subsection (a) must be taken by filing in court, within thirty (30) days after the date the decision is rendered, a verified complaint stating in a concise manner the general nature of the charges against the officer, the decision of the board, and a demand for the relief asserted by the officer. A bond must also be filed that guarantees

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the appeal will be prosecuted to a final determination and that the plaintiff will pay all costs only if the court finds that the board's decision should be affirmed. The bond must be approved as bonds for costs are approved in other cases. The county must be named as the sole defendant and the plaintiff shall have a summons issued as in other cases against the county. Neither the board nor the members of it may be made parties defendant to the complaint, but all are bound by service upon the county and the judgment rendered by the court.

(f) All appeals shall be tried by the court. The appeal shall be heard de novo only upon any new issues related to the charges upon which the decision of the board was made. Within ten (10) days after the service of summons, the board shall file in court a complete written transcript of all papers, entries, and other parts of the record relating to the particular case. Inspection of these documents by the person affected, or by the person's agent, must be permitted by the board before the appeal is filed, if requested. The court shall review the record and decision of the board on appeal.

(g) The court shall make specific findings and state the conclusions of law upon which its decision is made. If the court finds that the decision of the board appealed from should in all things be affirmed, its judgment should so state. If the court finds that the decision of the board appealed from should not be affirmed in all things, then the court shall make a general finding, setting out sufficient facts to show the nature of the proceeding and the court's decision on it. The court shall either:

- (1) reverse the decision of the board; or
- (2) order the decision of the board to be modified.

(h) The final judgment of the court may be appealed by either party. Upon the final disposition of the appeal by the courts, the clerk shall certify and file a copy of the final judgment of the court to the board, which shall conform its decisions and records to the order and judgment of the court. If the decision is reversed or modified, then the board shall pay to the party entitled to it any salary or wages withheld from the party pending the appeal and to which the party is entitled under the judgment of the court.

(i) Either party shall be allowed a change of venue from the court or a change of judge in the same manner as such changes are allowed in civil cases. The rules of trial procedure govern in all matters of procedure upon the appeal that are not otherwise provided for by this section.

(j) An appeal takes precedence over other pending litigation and shall be tried and determined by the court as soon as practical.



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